Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1555

KAISER INDUSTRIES CORPORATION ET AL.,
Petitioners,
v.
JONES & LAUGHLIN STEEL CORPORATION,
Respondent.

BRIEF OF RESPONDENT, JONES & LAUGHLIN STEEL CORPORATION, OPPOSING MOTION OF THE AMERICAN PATENT LAW ASSOCIATION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

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I

THE MOTION IS WITHOUT VALID BASIS.

The Motion signally fails to comply with the requirements of Rule 42(3):

THERE IS NO ACCEPTABLE STATEMENT OF "THE NATURE OF THE APPLICANT'S INTEREST": The Association is a "house divided". There is nothing to indicate how many of its members favor the granting of certiorari and how many are opposed. Only three names appear on the Motion, urging that certiorari be granted; four other members, one of whom (Mr. Finnegan) is a member of the Association's Board of Managers, appear as attorneys and counsel on the *amicus* brief of Crucible, Inc., urging that certiorari be denied. Absent a showing that the Motion is backed by at least a majority of the Association's membership, it cannot be assumed that the Motion correctly states the nature of the Association's interest.

THERE IS NO STATEMENT OF "FACTS OR QUESTIONS OF LAW THAT HAVE NOT BEEN, OR REASONS FOR BELIEVING THAT THEY WILL NOT ADEQUATELY BE, PRESENTED BY THE PARTIES": The Motion utterly ignores this requirement of Rule 42(3).

THERE IS NO SHOWING OF "THEIR RELEVANCY TO THE DISPOSITION OF THE CASE": As will appear below, the Motion is predicated on non-existent "facts" and argues non-existent questions of law and hence presents nothing relevant to the disposition of Kaiser's petition for certiorari.

II

THE ASSOCIATION'S CONTENTIONS DO NOT DESERVE CONSIDERATION BY THIS COURT.

(1) The Association is wholly in error in asserting (p. 3 of Brief annexed to the Motion) that the question whether the patentees had a full and fair chance to litigate the validity of their patent in the *McLouth* case "was not decided by the Third Circuit Court". This is precisely what the Third Circuit did decide (App. 2, 24-27, 28 ff.).

There are no "sharply contrasting interpretations of *Blonder-Tongue*" (p. 3 of brief annexed to Motion). The Third Circuit decision is consonant with the decisions in all other circuits and with *Blonder-Tongue* itself. The *only* decision that was ever out of line was the Pennsylvania District Court decision herein, subsequently reversed by the Third Circuit.*

(2) The Association's animadversions upon the procedural fairness of the *McLouth* courts (p. 5 of brief annexed to Motion) are unwarranted (App. 29-30, 32-33; J&L Br. in Opposition to the Petition, pp. 4-5, 16-17).

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*A primary mistake of the Pennsylvania District Court was that it did not confine its inquiries to the question of full and fair opportunity to litigate but based its denial of J&L's collateral estoppel plea essentially on the proposition that the patent should have been held valid in the first litigation, and went far beyond proper bounds of inquiry, even on that theory (App. 39; J&L Br. in Opposition to the Petition, pp. 18-24). Citing *Blonder-Tongue,* the Third Circuit held that the correctness of the result in the first-decided case is not at issue in deciding a plea of collateral estoppel (App. 23-27); it then went on to apply the *Blonder-Tongue* criteria and convincingly showed that all of them had been met (App. 28-40).

Moreover, the Association has overlooked the fact that petitioners never complained of any procedural unfairness at any stage of the *McLouth* litigation (App. 32-33). We invite particular attention to the petition for certiorari in the *McLouth* case at No. 949, October Term, 1968; cert. den. 393 U.S. 1119.

(3) The Association's argument that the defense of file wrapper estoppel was "crucial to the finding of invalidity" (p. 5 of brief annexed to Motion) is ill-founded in fact and absurd in law. The fact is that the claims were held invalid in *McLouth* because they had been drawn so broadly as to cover prior art, with file wrapper estoppel given only as "another" reason why they could not be construed as petitioners desired (App. 635, 759-64, 764-67). The argument is wrong in law because in essence it is that a claim cannot be held invalid for overclaiming under Sec. 112 unless there is also a file wrapper estoppel, a patent absurdity.